

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICOLAS ROHRBACH,

Defendant.

NO. CR-09-2074-LRS-4

**ORDER GRANTING MOTION TO
DISMISS**

BEFORE THE COURT is Defendant Rohrbach's Motion to Dismiss, Ct. Rec. 323, filed April 27, 2010. On April 29, 2010, a jury acquitted Defendant on Count 12 of the Superceding Indictment (Ct. Rec. 313) and a mistrial was declared on Count 13 (Ct. Rec. 318). Defendant seeks to dismiss Count 13 based on Double Jeopardy for the alleged unlawful sale of a different firearm sold under the same facts known to the jury for the firearm sold in Count 12. A hearing on the motion was held on June 4, 2010.

On June 7, 2010, the Court held a telephonic hearing to deliver its ruling upon said motion that was placed under advisement on June 4, 2010. With the benefit of briefing and supplemental briefing from both the government and Defendant, and reviewing the transcripts from the trial,

1 the Court enters the following order, which is designed to memorialize
2 and supplement the oral rulings of the Court on June 7, 2010 which are
3 incorporated herein by reference. The evidence for both Counts 12 and
4 13 is inextricably intertwined and cannot be parceled out for a trial on
5 Count 13. The Court finds that any verdict of guilt on Count 13 would
6 of necessity require redetermination of factual issues which were found
7 in the defendant's favor at the time of trial on Count 12. Based on the
8 foregoing, and for the reasons set forth orally on the record,
9

10 **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion to Dismiss, **Ct. Rec. 323**, is **GRANTED**. Count
12 13 is **DISMISSED** with prejudice.

13 2. Any remaining motions are denied as moot.

14 3. The trial date of September 27, 2010 and all other dates are
15 **VACATED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter
17 this order and to provide copies to counsel.

18 **DATED** this 7th day of June, 2010.
19
20

21 ***s/Lonny R. Suko***

22 _____
LONNY R. SUKO
23 Chief United States District Judge
24
25
26